

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

In the matter of USA Petroleum Corporation:)	
Violation of Section 13304 of the California Water Code,)	COMPLAINT NO. 6-98-61 FOR ADMINISTRATIVE CIVIL LIABILITY
Violation of Water Quality Standards prescribed in the)	
<i>Water Quality Control Plan for the Lahontan Region</i> , and)	
Violation of Cleanup and Abatement Order No. 6-97-101)	
and Cleanup and Abatement Order No. 6-97-101A1)	

ISSUED TO USA PETROLEUM CORPORATION, EL DORADO COUNTY, APN 032-141-281, YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are charged with a violation of provisions of law, or orders of the Regional Water Quality Control Board, Lahontan Region (Regional Board), for which the Regional Board may impose administrative civil liability pursuant to the California Water Code.
2. Unless waived, a hearing on this matter will be held before the Regional Board within 60 days following the issuance of this Complaint. You, or your representatives, will have an opportunity to address and contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. The hearing is scheduled for the Regional Board meeting to be held on October 1 and 2, 1998 in South Lake Tahoe, California. An agenda showing the time set for the hearing will be mailed to you not less than ten days before the hearing date.
3. At the hearing, the Regional Board will consider whether to affirm, reject, or modify the proposed civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

ALLEGATIONS

4. **USA Petroleum Corporation** violated the following provisions of law and orders of the Regional Board:

Cleanup and Abatement Order No. 6-97-101

The Executive Officer issued Cleanup and Abatement Order No. 6-97-101 to the USA Petroleum Corporation on October 22, 1997. Cleanup and Abatement Order No. 6-97-101 contains the following Orders:

- “3. By **November 1, 1997**, implement cleanup and abatement at 1140 Emerald Bay Road in South Lake Tahoe to remediate petroleum pollution

in ground water and soil. Cleanup and abatement shall consist of an operational air sparging and soil vapor extraction system, in the manner proposed in the EMCON September 2, 1997 workplan, after measurable free product is removed or another method which can be proposed and approved by Board staff and implemented by the deadline above. The cleanup system shall stay in operation until Regional Board staff give approval for it to be shut down. In addition, take necessary actions to determine the cause of petroleum free product at the site and to cleanup and abate the unauthorized release in accordance with the California Underground Storage Tank Regulations.

4. By **November 17, 1997**, submit a workplan that proposes a method to fully delineate the lateral and vertical extent of petroleum pollution in ground water. Monitoring wells screened at multiple depths beneath the water table shall be recommended in the vicinity of STPUD's Tata Lane well [No. 4] to determine the migration pathway of petroleum constituents impacting the well. The workplan must discuss a means to evaluate the presence of potential ethers, other than MTBE, and alcohols which could be present in ground water from gasoline products.
5. By **December 22, 1997**, submit to this Regional Board information that shows that clean up and abatement is in operation at the USA Gas Station. Such information shall include permits and paperwork from applicable agencies to operate the air sparging and soil vapor extraction system, and other information regarding vacuum rate, influent and effluent concentrations, area of influence of the system, etc. Further, describe actions taken to determine the cause of petroleum free product at the site and to abate the unauthorized release. If the cause was not identified, list what steps will be taken to prevent future unauthorized releases.
6. By **January 9, 1998**, following approval by Board staff, implement the ground water investigation workplan referenced in Order No. 4 above.
7. By **March 6, 1998**, submit a technical report that includes data from the fourth quarter 1997 monitoring event and the new monitoring wells. The report shall include ground water elevations from wells surveyed by a state licensed surveyor or civil engineer. Include a potentiometric map with water table contours and calculations for ground water flow direction and gradient. Non-detect ground water pollution contours for Benzene, MTBE, and TPH-gasoline shall be shown on site maps. The vertical thickness of petroleum pollution in ground water at the source area and STPUD's Tata Lane well must be described.

Enclose a corrective action plan in the report that proposes three options to contain pollution from impacting the STPUD's Tata Lane well [No. 4], and selection of a recommended option. If the ground water plume is not

fully influenced by the air sparging and soil vapor extraction system, include a plan to expand the system. If the non-detect lateral and vertical boundaries of the plume were not defined in the previous investigation, include a workplan that proposes additional ground water sampling points. The corrective action plan and/or the investigation workplan must contain an implementation schedule.”

The USA Petroleum Corporation violated Order No. 3, above, by failing to implement the approved remediation plan (the soil vapor extraction system) until December 10, 1997--39 days late. The USA Petroleum Corporation also violated Order No. 3, above, by failing to take necessary actions to determine the cause of petroleum free product at the site until a tracer test of the tank system was initiated on April 13, 1998--163 days late. The USA Petroleum Corporation violated Order No. 5, above, by failing to submit information that showed that the soil vapor extraction system was in operation until January 30, 1998--39 days late. The USA Petroleum Corporation also violated Order No. 5, above, by failing to submit a report describing actions taken to determine the cause of petroleum free product at the site until May 14, 1998--143 days of violation. The USA Petroleum Corporation violated Order No. 7, above, by failing to: 1) submit maps showing non-detect ground water pollution contours until April 21, 1998 (46 days of violation); 2) provide water elevations from wells surveyed by a licensed surveyor or civil engineer until June 10, 1998 (96 days of violation); 3) submit a Corrective Action Plan to protect STPUD's Tata Lane well until a Remedial Action Plan was submitted on May 8, 1998 (63 days of violation); 4) submit a workplan to define the vertical and lateral boundaries of the plume until April 14, 1998 (39 days late); and 5) submit a plan to expand the air sparge and soil vapor extraction system until June 15, 1998 (101 days of violation).

Cleanup and Abatement Order No. 6-97-101A1

The Executive Officer issued Amended Cleanup and Abatement Order No. 6-97-101A1 to the USA Petroleum Corporation on April 17, 1998. Amended Cleanup and Abatement Order No. 6-97-101A1 contains the following Order:

- “3. By **June 10, 1998**, submit the results of the additional ground water assessment, proposed on April 14, 1998. The report shall include ground water elevations from wells surveyed by a state licensed surveyor or civil engineer. Include a potentiometric map with water table contours and calculations for ground water flow direction and gradient. Non-detect ground water pollution contours for Benzene, MTBE, and TPH-gasoline shall be shown on site maps. Describe the vertical thickness of petroleum pollution in ground water at the source area and towards the Tata Lane municipal supply well No. 4. Enclose a geologic cross section showing stratigraphic layers, water table elevations, and extent of petroleum pollution. If the non-detect lateral and vertical boundaries of the plume were not fully defined in the previous investigation, include a workplan

that proposes additional sampling points. The report shall also include an amended remedial action plan that addresses the portion of the ground water petroleum plume that will not be cleaned up by the plan submitted in Order No. 1 above.”

The USA Petroleum Corporation violated Order No. 3, above, by failing to submit a workplan for an additional ground water assessment until June 16, 1998 (6 days of violation). The USA Petroleum Corporation also violated Order No. 3, above, by failing to submit an amended Remedial Action Plan (RAP) to remediate the full length of the ground water plume to the Tata Lane well. The Discharger has submitted three amended RAPs but each of them have been deemed incomplete by Board staff in comment letters. As of August 20, 1998, USA Petroleum Corporation has been in violation of Order No. 3 for 71 days through August 20, 1998, when this complaint was drafted.

5. The following additional facts are the basis for the violations of Cleanup and Abatement Order No. 6-97-101 and Amended Cleanup and Abatement Order No. 6-97-101A1. These allegations are based on information provided by USA Petroleum Corporation (the Discharger), USA Petroleum Corporation’s consultants, Pinnacle/EMCON and Park Environmental, the El Dorado County Department of Environmental Management, the South Tahoe Public Utility District (STPUD), as well as information ascertained by Regional Board staff.

Monitoring reports for ground water sampling in 1995 indicated that the ground water plume had migrated beyond the monitoring well network at the site. Pursuant to a request by Regional Board staff, the Discharger installed four new monitoring wells in June 1996. The Discharger believed that the sampling results from the site investigation indicated that a majority of the plume was delineated. However, the Discharger did not submit a corrective action plan to remediate contamination, in accordance with Section 2725 of the California Underground Storage Tank Regulations.

Although the Discharger believed the plume to be delineated, subsequent monitoring reports showed that the MTBE plume was not defined. The highest concentration of MTBE was detected at 31,000 µg/l in MW-4 on November 26, 1996.

At the request of Board staff, the Discharger submitted a corrective action plan, dated February 6, 1997, to clean up pollution at the site. The plan recommended natural attenuation as a clean up strategy. The plan was not approved by Board staff because of high levels of gasoline constituents in soil and ground water and the threat to nearby receptors. The Discharger submitted a revised plan on July 28, 1997 that recommended implementing soil vapor extraction at the site. Board staff approved the revised plan on August 12, 1997, but with the stipulations that the Discharger (1) add air sparging to the remediation system to clean up ground water pollution and (2) conduct an additional investigation to fully define the boundaries of the plume.

In March 1997, STPUD staff informed Regional Board staff that MTBE had been detected at trace levels (1.3 µg/l) in the Tata Lane Well No. 4 since Summer 1996.

MTBE levels in the municipal supply well were increasing with time. The source of MTBE at the time was not known to either the STPUD or Regional Board staff, but the USA Gas Station No. 7 was suspected.

The Second Quarter 1997 Ground Water Monitoring Report showed that for the first time since 1983, free product was observed on ground water at the USA Gas Station. Approximately 0.01 foot of free product was discovered in MW-5 on May 30, 1997. This information implied that an unauthorized release of petroleum products was occurring or had recently occurred at the site.

On September 2, 1997, the Discharger submitted a workplan for installing a vapor extraction well and three dual air sparge wells. The schedule in the workplan shows that all permits to operate the system would be acquired by September 21 and that the system would be operational by October 12, 1997. Neither of these dates were met.

On September 30, 1997, STPUD collected a ground water sample at 13.5 feet below ground surface from a temporary boring on a motel property at 1120 Emerald Bay Road in South Lake Tahoe. The sampling was part of an investigation to identify the source of MTBE detected in the Tata Lane Well No. 4. A laboratory analysis detected MTBE in the water sample at 20 µg/l. The sample location is approximately 210 feet downgradient of the underground storage tank basin at the USA Gas Station. A water sample taken from STPUD's Tata Lane well No. 4 on the same day showed MTBE at a concentration of 16 µg/l. This information indicated that the USA Gas Station No. 7 was the source of MTBE in the Tata Lane Well No. 4.

On October 22, 1997, the Regional Board Executive Officer issued Cleanup and Abatement Order No. 6-97-101. The Order directed the USA Petroleum Corporation to clean up and abate the pollution and threatened pollution within the Lake Tahoe Hydrologic Unit due to the illegal discharge of petroleum products to soil and ground water from 1140 Emerald Bay Road. The Order identified completion dates for specific cleanup, abatement and reporting actions. USA Petroleum has consistently been late in implementing cleanup and abatement of soil and groundwater pollution, in submitting plans for investigation and cleanup, and in reporting cleanup and abatement activities, as identified above. Delays attributable to the USA Petroleum Corporation have allowed increasing concentrations of petroleum hydrocarbons, including MTBE, to spread beyond the boundaries of the Service Station property towards municipal drinking water wells.

The STPUD shut down the Tata Lane Well No. 4 on July 22, 1998, because MTBE concentrations exceeded the State drinking water action level of 35 µg/l. On August 7, 1998, the Tata Lane Wells Nos. 1, 2, and 3 were also shut down as a precautionary measure. STPUD staff believed that since the Tata Lane Well No. 4 was no longer controlling the plume migration, the combined pumping rate of the Tata Lane Wells Nos. 1, 2, and 3 could swing the plume to those wells.

On August 13, 1998, the USA Petroleum Corporation shut down the USA Gas Station No. 7 to look for potential leaks, as identified in a August 7, 1998 report by

Pinnacle/EMCON. Board staff and El Dorado County Department of Environmental Management staff observed an apparent leak in the piping connected to the turbine pump at the northernmost underground storage tank. Similar leaks were also seen at two other turbine pumps. County staff directed USA Petroleum Corporation's consultant, Pinnacle/EMCON, to sample petroleum saturated soil beneath the former leak and collect another sample from under the north dispenser island. Elevated levels of petroleum hydrocarbons were detected beneath the turbine pump (including 274 milligrams per kilogram (mg/kg) MTBE and 7,660 mg/kg TPH-gasoline) and under the dispensers (including 5.13 mg/kg MTBE).

PROPOSED CIVIL LIABILITY

6. For the failure to comply with Cleanup and Abatement Order No. 6-97-101 and Amended Cleanup and Abatement Order No. 6-97-101A1, the Regional Board may impose administrative civil liability, pursuant to Section 13350(d)(1) of the California Water Code, when there is a discharge and an order of the Regional Board is violated. Liability shall be imposed not to exceed five thousand dollars (\$5,000), but which shall not be less than five hundred dollars (\$500), for each day in which the violation occurs.
7. In this matter, Regional Board staff have determined that the requirements of Cleanup and Abatement Order No. 6-97-101 have been violated on the dates November 2, 1997 through August 20, 1998, and that the requirements of Amended Cleanup and Abatement Order No. 6-97-101A1 have been violated on the dates June 11, 1998 to August 20, 1998. Therefore, the maximum administrative civil liability pursuant to Section 13350(d)(1) for 292 days of violation is one million four hundred sixty thousand dollars (\$1,460,000), and the minimum is one hundred forty-six thousand dollars (\$146,000).
8. Pursuant to Section 13327 of the California Water Code, the Executive Officer has considered the following factors in recommending the amount of the administrative civil liability:
 - a. The nature, circumstances, extent, and gravity of the violation or violations;

The violations are of a very serious nature, involving discharge of petroleum products to ground water in violation of the California Water Code and waste discharge prohibitions in the 1995 *Water Quality Control Plan for the Lahontan Region*. On August 13, 1998, Board staff and County staff observed apparent leaks in the piping connected to the turbine sumps for three underground storage tanks. The illegal discharge of petroleum products has impaired the drinking water aquifer for use for municipal supply in the City of South Lake Tahoe and has caused STPUD to shut down a municipal drinking water well. Three additional STPUD wells are significantly threatened by the petroleum hydrocarbon plume and have also been shut down. Delays in investigation of the source by the Discharger have resulted in continued release of petroleum products, exacerbating the problem.

- b. Whether the discharge is susceptible to cleanup and abatement;

The discharge is susceptible to cleanup or abatement, but cleanup activities have only been undertaken for about half the entire volume of impacted soil and ground water. The contamination of water used for drinking and pumped by the Tata Lane Well No. 4 municipal supply well has not been abated. The ongoing leak at the station was not ceased until August 13, 1998.

- c. The degree of toxicity of the discharge;

The discharge contains petroleum products (benzene, toluene, ethylbenzene, and xylenes) in toxic amounts. The level of MTBE detected in ground water at the USA Gas Station site exceeds the State of California Drinking Water Action Level.

- d. The violator's ability to pay;

The violator has not provided financial data to the Regional Board to show its inability to pay.

- e. The effect on the violator's ability to continue business;

The violator has not provided information to the Regional Board on the violator's inability to continue to conduct business as a result of this action.

- f. Any voluntary cleanup efforts undertaken by the violator;

The violator submitted a plan to implement a soil vapor extraction system to remediate soil contamination at the gas station plan before Cleanup and Abatement Order No. 6-97-101 was issued. No voluntary cleanup efforts were implemented.

- g. Any prior history of violations;

The violator has a long history of violating Regional Board requirements in this matter. In 1983, the violator was issued Cleanup and Abatement Order Nos. 6-83-14 and 6-83-21. Remediation of the 1983 petroleum release had not been implemented when Cleanup and Abatement Order No. 6-97-101 was issued on October 22, 1997. Historical, continued and ongoing violations by USA Petroleum Corporation have significantly impaired the ground waters of the Lake Tahoe Hydrologic Unit and adversely impacted water quality for beneficial uses.

- h. The degree of culpability;

The USA Petroleum Corporation, or entities under its control, is the land owner, the owner of the USA Gas Station, and the owner of the underground fuel tank

and fuel dispensing system which produced the illegal discharge, and is culpable to a high degree for the violations. The 1997 County Assessor Parcel Number records show that Agoura Associates Ltd. are listed as the owner of the property; Agoura Associates mailing address is the same as USA Petroleum Corporation and is believed by Regional Board staff to be a wholly-owned subsidiary of USA Petroleum Corporation.

- i. Any economic savings for the violator resulting from the violation;

Economic savings from avoidance and postponement of cleanup are estimated at \$207,000. This amount is based on an estimated \$200,000 cost for implementing the cleanup actions and \$7,000 interest on the \$200,000 at 8% annual interest rate.

- j. Other matters as justice may require.

Petroleum products from the USA Gas Station have adversely impacted ground water quality and have prevented the use of one of STPUD's municipal drinking water wells (Tata Lane Well No. 4). STPUD staff have expended a significant amount of time to investigate the release affecting the Tata Lane well and to manage the impacts to the water supply; STPUD's investigation efforts and monitoring have cost approximately \$35,000. Regional Board staff have spent a significant amount of time investigating the release, writing letters, performing reviews of information, and conferring with consultants and representatives. Staff costs just for preparing this enforcement order to date are estimated at \$5,000.

In evaluating the administrative civil liability amount, the Executive Officer has considered the relative gravity of USA Corporation's violation of reporting and investigation requirements versus their violation of cleanup requirements. Civil liabilities for violating reporting and investigation requirements have been imposed at a rate of \$500 per day of violation. Civil liability for failure to implement the air sparge and soil vapor extraction system has been imposed at a rate of \$1,000 per day of violation. Failure to implement the Corrective Action Plan has been imposed at a rate of \$1,000 per day for the first 30 days of violation, \$2,000 per day for the second 30 days of violation, and \$3,000 per day for the final 11 days of violation (through August 20, 1998). The Executive Officer is prepared to impose administrative civil liabilities in increasing amounts for continued delays in implementing the clean up of the entire plume of petroleum hydrocarbons generated by the USA Gas Station in South Lake Tahoe.

9. The Executive Officer of the Regional Board proposes that administrative civil liability be imposed by the Regional Board in the amount of **\$292,500.00**, pursuant to Section 13350(d)(1) of the California Water Code.

WAIVER OF HEARING

10. You may waive the right to a hearing, If you choose to waive the hearing, please check and sign the waiver and return it prior to the proposed hearing date, together with a cashier's check or money order for the amount of civil liability proposed in paragraph 9 above, to the following address:

California Regional Water Quality Control Board
Lahontan Region
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150

Ordered by: _____ Dated: _____
HAROLD J. SINGER
EXECUTIVE OFFICER